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C O N F I D E N T I A L SANTIAGO 000130

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TAGS: [PREL](#) [MARR](#) [MASS](#) [CI](#)  
SUBJECT: CHILE: GOC UNWILLING/UNABLE ON ARTICLE 98;  
PROPOSES SOFA LANGUAGE

REF: A. CORBETT/KAMIAN 1/17/2006 EMAIL

[1](#)B. SANTIAGO 91  
[1](#)C. 05 SANTIAGO 2573  
[1](#)D. 05 SANTIAGO 2544  
[1](#)E. 05 STATE 225438

Classified By: Ambassador Craig Kelly for reasons 1.4(b) and (d).

[1](#)1. (C) Summary: U.S. and GOC officials conducted a digital video conference (DVC) on January 18 to explore ideas towards managing relations after Chile ratifies the Rome Statutes creating the International Criminal Court (ICC). International Security and Nonproliferation Assistant Secretary Rademaker reiterated the U.S. priority of

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concluding an Article 98-type agreement and discussed options. Chilean Foreign Ministry Director General Portales stated that an Article 98 agreement was not politically possible. Portales suggested President Bush and Lagos had "agreed" in November to find a creative solution to the issue. (Note: Portales clearly had the impression the November meeting gave Chile more of a blank check than is our understanding. End Note.) He said the GOC had submitted two proposals for reaching this objective by deepening mil-mil cooperation through a durable SOFA. A/S Rademaker cautioned Chile against believing the USG would grant Chile a waiver of American Servicemember's Protection Act (ASPA) prohibitions, noting other allies had taken the decision to enter into Article 98 agreements with the U.S. Both sides agreed to continue exploring options toward resolving the Article 98 issue. End Summary.

2 (U) Director General for Foreign Affairs Ambassador Carlos Portales was accompanied by Gonzalo Garcia, Under Secretary of the Navy; Ambassador Claudio Troncoso, Director, MFA Legal Affairs Directorate; Alejandra Quezada, Lawyer, Legal Affairs Directorate; Maria Inez Ruz, Advisor to the Minister of Defense; and Rodrigo Nieto, Chief of Staff to Portales.

[1](#)3. (C) During the discussions, Assistant Secretary Rademaker laid down the following markers:

-- The United States priority is to conclude an Article 98

with Chile at the earliest possible date.

-- The U.S. is prepared to explore creative options to this end, including a stand-alone agreement, developing an existing agreement, or through a protocol to an existing agreement. (Ref A point paper submitted to GOC January 17.)

-- Chile should not count on a Presidential waiver of ASPA sanctions: the only historical precedent not related to an Article 98 agreement was for new NATO members, at least one of which had previously concluded an Article 98 agreement. MNNA has never been used as a tool to avoid sanctions for a country subject to the ASPA prohibition.

-- Several other countries, notably Colombia in the hemisphere, have faced political difficulties in deciding to enter into an Article 98 agreement with the U.S. Granting a national interest waiver for Chile now could harm our relations with those countries.

-- A/S Rademaker acknowledged our receipt of and interest in the Chilean proposals. He noted the Chilean-proposed SOFA language grants broad protections to a limited class of Americans, while the USG seeks narrow protection (non-surrender to the ICC) for a broader class of persons, to include U.S. nationals, current and former government officials, employees, and military personnel.

-- Ambassador Kelly noted that Article 98 had been consistently misrepresented in the Chilean press as a non-reciprocal agreement. In fact, Article 98 agreements are commonly reciprocal, and this fact, if more widely known, might reduce some of the legislative resistance to an Article 98 agreement.

14. (C) Portales, for his part, laid out the following points:

-- Chilean President Lagos had conveyed to the MFA that President Bush wished to avoid damage to U.S.-Chile relations from Chile's ratification of the ICC. In this spirit, and given increasing instability in the region, Chile had advanced proposals for closer mil-to-mil relations.

-- Chile was not in a position to go beyond the proposals presented to Ambassador Kelly on January 13 (ref B). Lagos explained this to President Bush during their meeting in November. Chile does not now see the possibility of concluding an Article 98-type agreement.

-- Portales believes that ASPA has several options for exemptions, and different criteria for different countries. The U.S. does have some flexibility as to whether to apply the ASPA prohibitions.

-- The GOC and the Chilean Congress were philosophically committed to the universal jurisdiction of the ICC. Chile was in line with the EU common position on the ICC.

-- Congress' February recess means the ICC would not be ratified before the new Congress takes office in March. However, the new Congress would share the same commitment and the ICC would eventually be ratified.

-- Portales noted the Defense Consultative Committee meetings scheduled in Santiago on January 24 and 25, and said he hoped the U.S. and Chile could continue to discuss the Chilean proposals for increased military cooperation in that venue. (Note: Neither the Article 98 negotiators nor the SOFA negotiators will be present at the DCC talks. End Note.)

The Way Forward

15. (C) Portales said he and U/S Garcia would report the results of the meeting back to their ministries and a report would also go to President Lagos. A/S Rademaker suggested the GOC could consider delaying action on ICC ratification until our governments could agree on a way forward. Portales

agreed to study the Janaury 17 point paper in more depth.  
KELLY